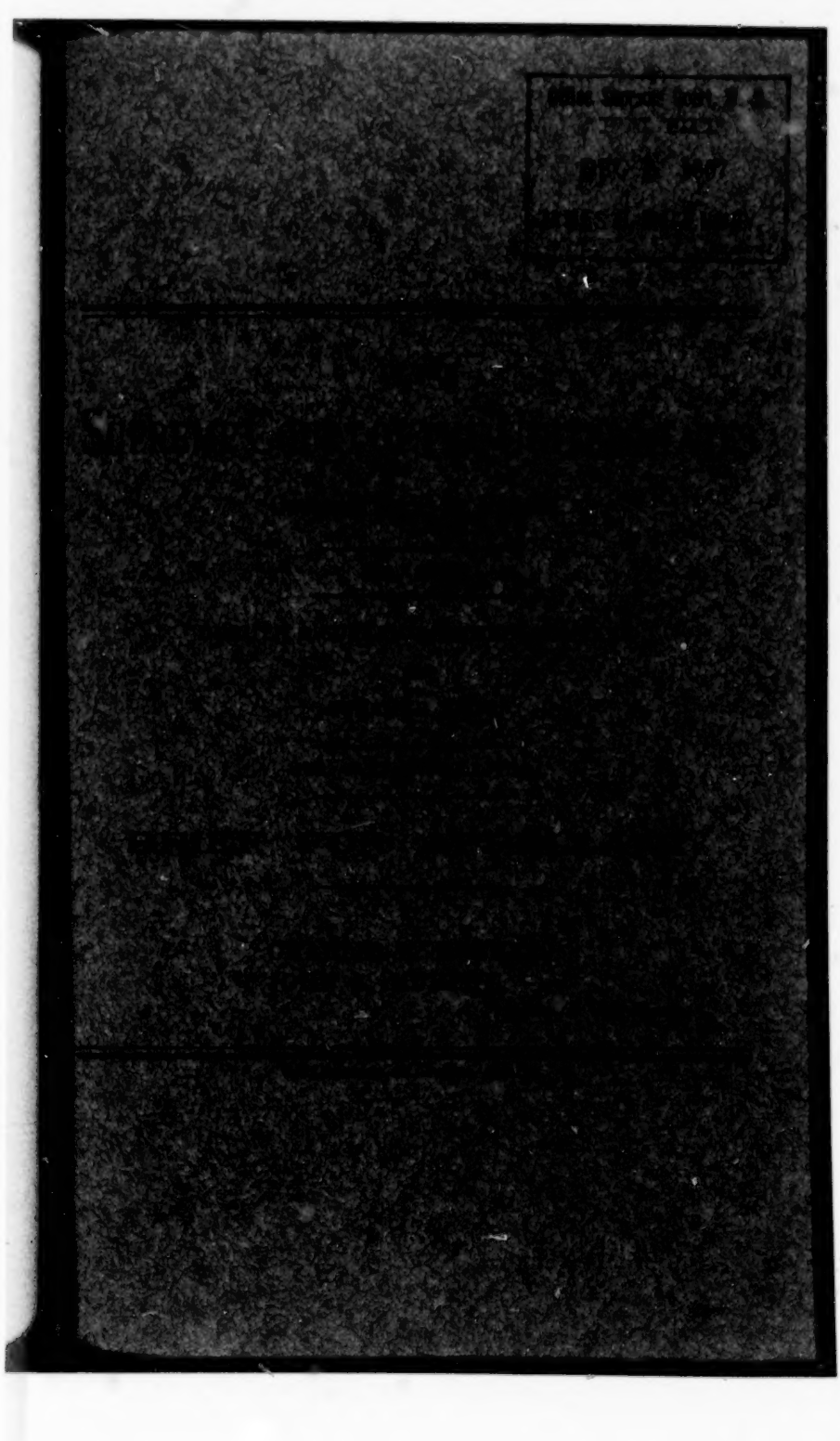

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1907.

No. 232.

DULUTH & SUPERIOR BRIDGE COMPANY

vs.

STEAMER TROY.

IN ADMIRALTY.

BRIEF FOR APPELLANT.

This is an appeal from the District Court of the United States for the Western District of Wisconsin.

The question is one of admiralty jurisdiction arising out of a collision of the Steamer Troy with the Duluth & Superior Bridge over the St. Louis River, and was decided by the District Court upon exceptions to a libel *in rem* against the steamer to recover damages sustained by the bridge.

The libel alleges that the libelant is the owner and was in possession and control of a certain bridge, which connects the cities of Duluth, Minn., and Superior, Wis., and is erected across the St. Louis river, which is at this point the boundary between the States of Wisconsin and Minnesota.

The libel alleges that there are two permanent spans of this bridge, each 200 feet long, and one draw or movable span 460 feet long. It is alleged that the draw or movable span is placed upon a turn-table, and this rests upon a base built of stone and placed upon many submerged wooden piles driven into the bottom of the river.

Upon the turn-table of the draw span there was all necessary machinery, so that the draw span can be readily swung around, making an opening up and down the river leaving a channel 200 feet in width on each side of the bridge, when open, for the passage of vessels. When the bridge is open it is guarded or protected by rows of piles up and down the river for a width of 60 feet and a length of 500 feet. On the channel side of this protection pieces of timber are fastened as fenders to protect the piers of the protection, and to prevent injuring vessels passing through the bridge. The bridge is known as a center swing bridge and when closed its ends rest on permanent abutments and piers, so that street cars, teams and all kinds of vehicles and passengers can cross the same between Duluth and Superior.

On the morning of August 11th, 1906, at a few minutes before 1 o'clock, the Steamer Troy signaled to the engineer of the bridge to open the same. The bridge was cleared of passengers and vehicles and it began to swing, the Superior or east end moving up stream. It is alleged the Steamer Troy, running unusually and unnecessarily fast, came on and collided with the center protection of the bridge and glancing along struck the bridge, which was then well clear of the shore abutment and still swinging rapidly away from the steamer. The blow was so

heavy that it lifted the bridge and gave it a twist, causing it to buckle and break so that both ends fell into the stream, almost entirely obstrucing the channel and causing damage to the bridge amounting to $155,600.

The Western Transit Company, owner of the Steamer Troy, filed exceptions and an answer to this libel, and in the former it alleged:

1st: That the bridge injured was a structure on land, exclusively for the purposes of land travel, and in no sense or degree an aid to navigation, but, on the contrary, an obstruction in a navigable water channel and highway, a part of the public waters of the United States.

2nd: That the damage sustained by the bridge occurred on land, and no part of the same occurred or was suffered on water or any place within the jurisdiction of the admiralty court; and

3rd: That the claim for damage does not show a case of admiralty jurisdiction.

A hearing was had upon the libel and exceptions and the court sustained the exceptions and dismissed the libel.

Thereupon the libelant appealed.

ARGUMENT.

We are aware that there is pending in this court the case of *Cleveland Terminal & Valley R. R. Co. et al.* v. *Cleveland S. S. Co.*, being No. 84, October Term, 1907, and that this case involves substantially the same questions of jurisdiction that are involved in the case at bar.

In the former case the Steamer Reis collided with the center protection of a bridge located in the navigable channel of the Cuyahoga river in the City of Cleveland, Ohio, and injured it and at the same time the abutment or shore end of the bridge, and the wharf or dock in the immediate vicinity.

This case differs from the one at bar in that the bridge itself was not injured by the Steamer Reis, while in the case at bar the center protection and the bridge were both injured.

We have carefully read the able brief of proctors for appellants in the *Reis* case and it covers so many of the points of argument that apply to the case at bar, that we can add but little to what is there said that could be of use or benefit to the court in determining the question involved in this case.

The decisions and authorities that we would cite in support of appellant's case here, would be the same that are cited in the *Reis* case, and we therefore ask permission to refer to that brief rather than reprint the citations and references that are there found.

It will not be disputed that this collision between the Troy and the bridge presents a case or controversy within the jurisdiction of an admiralty court.

The Western Transit Company, the owner of the Troy, is at liberty to file a libel in admiralty to recover any damages that it may have sustained by collision with this bridge, and the court would be competent to try the question of fault and liability and enter a decree against the owner of the bridge, if solely at fault, for the whole of the damage, or if the steamer was also held to be at fault, for one-half of the latter's damages. As to this there can be no question, for this court, in the case of *The Blackheath*, 195 U. S., 361, on page 362, says:

> "It is clear that if the Beacon had been at fault and had hurt the ship, a libel could have been maintained against a private owner, although not *in rem*."
>
> *Phil. W. & B. R. Co.* v. *Phil. & H. De G. Steam T. Co.*, 23 How., 209.
>
> *Atlee* v. *Northwestern Union Packet Co.*, 21 Wall., 389.
>
> *Panama R. Co.* v. *Napier Shipping Co.*, 166 U. S., 280.

We are not here therefore to urge this court to extend the admiralty jurisdiction so that it embrace a controversy entirely new to the tribunals and the jurisdiction, or such a one as involves questions that had never before been tried in the admiralty courts in this country. There are numerous decisions of the District and Circuit Courts in the books in which controversies arising out of collisions between steamers and bridges have been tried in the admiralty courts. We refer to a few of them only:

Ethridge v. *Philadelphia*, 26 F. R., 43.

Assaute v. *Charleston Bridge Co.*, 40 Fed. Rep., 765.

Hill v. *Board, etc.*, 45 Fed. Rep., 260.

Greenwood v. *Town of Westport*, 53 Fed. Rep., 824.

City of Boston v. *Crowley*, 38 Fed. Rep., 202.

Damage by wharf:

Ball v. *Frenholm*, 45 Fed. Rep., 588.

City of Lincoln, 25 Fed. Rep., 835.

Damage by obstruction to navigation:

Oregon C. Trans. Co. v. *Columbia St. B. Co.*, 53 Fed. Rep., 549.

A notable example of a collision between a floating vessel and an object on the land is the case of *The Maud Webster*, 8 Ben., 547, Fed. Cas., 9302. In this case a schooner navigating Long Island Sound came into collision with a derrick which was being used in the erection of a lighthouse on a shoal or reef in the waters of the Sound. A libel was filed by the owner of the schooner for damages sustained by her, and a cross libel was filed by the owner of the derrick to recover the damages to the derrick. The court took cognizance of the case, tried the question of fault and decided it against the schooner, dismissing the libel, but refused to enter a decree on the cross libel of the owner of the derrick upon authority of the case of *The Plymouth*, 3 Wall., 20.

Under this decision the owner of the derrick, although he had litigated in a court of competent jurisdiction the question of liability for damages sustained by both schooner and derrick, and the court had decided the controversy, found the fault and entered a decree against the schooner, was compelled to resort to a second tribunal to recover his dam-

ages. This is certainly an extraordinary condition of affairs. If, in every case of this kind, without impairing the present plan of the judiciary, the test of jurisdiction should be a state of facts which would give the admiralty court jurisdiction if the damages were sustained by the floating object, then it should also include the damages sustained by the fixed object. The whole controversy could then be settled at one trial, and by one decree and the jurisdiction would become a perfect and harmonious whole. A court of admiralty should be competent to hear all claims for damages which are inflicted by the ship itself. If, in such a case, the ship sustained damages it would be competent for her, if proceeded against, to file a cross libel and recover her damages in the same suit. It is the only logical, consistent and reasonable view to take of the jurisdiction. It certainly is a faulty system of jurisprudence which compels suitors, in a case of mutual damage, to resort to two different tribunals to settle one controversy. This, it seems to us, is fundamentally wrong, even though based on precedent. There can be no hardship to either party in carrying out the rule so as to embrace damages done by ships to structures on land with which, while navigating, she can collide or come in contact, nor is there any sound or valid reason why the Admiralty Court should not, in every case of damage done by a ship, take jurisdiction and decide who is liable, and enter such a decree as the facts warrant, be the same against the ship or the owner of the structure with which she collided.

From the standpoint of convenience and expediency it is desirable that a Court of Admiralty

should assume jurisdiction in cases of this kind. In all of the important ports of the Great Lakes and in many on the sea coast, steamers and vessels from distant points pass up and down narrow channels, confined by wharfs and docks on either side, and in many cases these are crossed by numerous bridges. Across the rivers emptying into Lake Michigan there are upwards of seventy bridges across navigable waterways and more than fifty miles of wharves and docks. It is almost a daily occurrence that vessels, by reason of negligence or accident, damage these wharfs and bridges and often receive damages themselves. The admiralty courts are the only ones which provide a lien and a proceeding *in rem* against the offending vessel. In many cases the vessel is owned in a distant state or country. The names of her owners are unknown. Personal service cannot be had on them. Attachment of property of the defendant, in a case of tort, like a collision, is not provided for by the laws of many states bordering upon navigable waters. Even if attachment issue, it can only attach the interest of the owner, and is always subject to all liens and incumbrances upon the steamer. The owner's interest only can be reached. In a proceeding *in rem* the vessel herself is liable regardless of the fact of her ownership, or how she may be incumbered by mortgages or other liens. Damages arising out of a tort are paid out of the proceeds of the vessel in preference to all liens arising *ex contractu*, including claims for seamen's wages.

The R. S. Carter, 40 Fed. Rep., 331.

The F. H. Stanwood, 49 Fed., 577, and cases there cited.

There is no valid reason why the owner of a bridge or wharf injured by a steamer, should be deprived of a remedy in admiralty, when that remedy is given to the owner of a vessel or some other floating object damaged by the same steamer. One is as much entitled to the advantages of a proceeding in admiralty as the other, and as was said by Mr. Justice Brown in the case of the *Blackheath*,

> "the distinction between damage done to fixed and floating structures is a somewhat artificial one, and in my view, founded upon no sound principle, and the fact that congress, under the constitution, cannot extend our admiralty jurisdiction, affords an argument for a broad interpretation commensurate with the needs of modern commerce."

The Blackheath Case.

Examination of the case of the *Blackheath* in the lower court, 122 Fed. Rep., 112, shows, that the decision was largely based on the case of *The City of Milwaukee* v. *Curtiss*, 37 Fed. Rep., 705.

The *Blackheath* case arose in Alabama. The opinion in the lower court was written by Judge Toulmin. He first established that the "locality" of an injury determined whether the admiralty had jurisdiction.

Citing *Herman* v. *Port Blakely Mill Co.* (D. C.), 69 Fed., 646. *The Mary Garrett* (D. C.), 63 Fed., 1009, and authorities therein cited.

The Professor Morse (D. C.), 23 Fed., 803: Then, to show that the "locality" of the swing part of a bridge over a navigable stream was on the land, and, as decisive of the case, he cited only the *Cur-*

tis case, and relied on it and made it authority for his holding.

This being so, it must follow that the decision of the Supreme Court in the *Blackheath* case is a direct overruling of the *Curtis* and also of the *Neil Cochran* cases, on which it relied, and the *John C. Sweeney* case which followed it. And a reference to the Arkansas, with approval in *The Blackheath*, 195 U. S., is a direct adoption of the reasoning of Judge Love as the reason of the Supreme Court, and the same reference to F. & P. M. No. 2 in the *Blackheath* decision, 195 U. S., is also an approval of the interpretation put upon the *Arkansas* case by the court in that case, and an authoritative denial of the position taken regarding the *Arkansas* case in *The Professor Morse*, 23 Fed., and the approval of the same by Judge Jenkins in the *Curtis* case.

Justice Holmes' approval and reference to the *Arkansas* and *F. & P. N. No. 2* is most significant, and his omission of all reference to the *Neil Cochran*, the *Curtis* and *John C. Sweeney* is proof positive that he intended to overrule those cases and the doctrine of "locality" on which they were based, and also the *Plymouth*, and to establish the more reasonable rules of maritime nature of tort, in consonance with the *Genesee* case and also *Dunham* v. *Ins. Co.*

The Blackheath in 122 Fed., 112, also cited Spencer on Marine Collisions, Sec. 11.

A reference to the text of Spencer shows that all the above cases are cited in support of the rule there laid down. It follows, therefore, that this section, and cited cases, having been before the court when considering the *Blackheath* appeal (there be-

ing no other question in the case except the one of jurisdiction), that if the court did not intend to overrule all the above mentioned cases, it would have named the exception in the opinion.

There can be no distinguishing of the *Blackheath* from the *Curtis*, the *John C. Sweeney*, or the case at bar, as to the facts, on the ground that a beacon light is a help to commerce, is one of its instrumentalities and bridges are not. That has never been made a test. The test of "locality' rests on the proposition that the structure being on land no lien in admiralty can attach; that it must be a floating body, personally. The test of "aid of commerce"was not in it.

If the use first aid to commerce had been a test, then the *Plymouth* and *Johnson* cases would have been decided the other way, because an elevator is only good because it facilitates commerce by loading vessels. Commerce cannot exist without means to load vessels. But the relationship to commerce never entered into consideration. It was, where was the locality, the locality of the thing injured when the damage was done.

Now, in *The Blackheath*, 122 Fed., 112 (lower case), it appears that the beacon was a structure 20 feet high, firmly fixed upon the bottom of the river by piles driven 12 feet deep. No lien in admiralty could attach to that any more than to an elevator. It was outside of the navigable channel, 15 or 20 feet. But if damage had been done to a vessel by negligence of the beacon an action *in personam* would lie in admiralty against the owner thereof. The same has been held in regard to bridges. It was only to be expected, therefore, in the rule of

consistency and natural justice, that if admiralty takes cognizance of an action *in personam* against a bridge or pier, for injury through negligence, to a vessel, that the same court should take cognizance of an action *in rem* or *in personam* against a vessel for injury to a bridge.

This consideration led Justice Brown to write a concurring opinion and expressly state that the *Blackheath* decision in 195 U. S. overruled the *Plymouth* and all decisions depending thereon for authority.

Quoting from the opinon of Justice Holmes:

> "And if the libel be founded upon one single continued act, which was principally upon the sea, though part was upon the land, a prohibition will not go. Com. Dig. Admiralty, F. 5; 1 Roll. Alr., 533, pl. 18."

In distinguishing the *Plymouth* the opinion says:

> "In the case of the Plymouth there was nothing maritime in the nature of the tort, for which the vessel was attached. The fact that the fire originated on the vessel is contrasted with the fact of collision. The former is not martime, only incidentally. The latter, collission, is entirely maritime in its nature."

Justice Holmes mentions that a beacon was an aid to navigation and from ancient times subject to admiralty. It is also true that "an injury from any ship" was from ancient times cognizable by admiralty. The decision must stand or fall as it rests on the principle, and that principle must be the nature of the tort; it is maritime in its character."

Here we have a swing bridge in the middle of the channel exposed to the negligence of vessels. Dam-

ages are large. Admiralty courts are experienced in determining the respective negligence of ships and bridge operatives. Damage often happens through mutual negligence. This would bar recovery to the injured one in a court of law. Admiralty decrees are according to natural justice. Admiralty, alone, can control vessels and their owners. Their decrees are omnipotent. If bridge companies are denied the protection of admiralty, accidents such as this must be more frequent. No reason exists against admiralty assuming jurisdiction; many reasons are prominent why it should.

A Bridge is Not an Obstruction, but an Aid to Navigation.

Stress will be laid upon the point that in this case the bridge was not an aid to navigation, and that, therefore, a collision with it, and damage to it, would not bring the case within the authority of the case of the *Blackheath*. It is alleged that the bridge was not alone not an aid to navigation, but was an obstruction to it.

In meeting this argument we have to say on this subject, that a bridge across a navigable stream or waterway is a substitute for navigating the same by vessels. Without the aid of bridges streams like the St. Louis river could only be crossed by boats known as ferries. These ferries are watercraft entitled to the same rights and privileges in crossing the stream, that are accorded to vessels moving up and down the same. Without the bridge, therefore, the vehicles and passengers desiring to cross the waterway must resort to boats. For the convenience of those desiring to cross the waterway bridges

are built and maintained. Before this bridge, or any bridge, can be built across a navigable stream, it becomes necessary to obtain from the sovereignty, either the state or the government, the right to build the bridge. The paramount right of navigation of all navigable waters is conceded, and it is only the state that has a right to permit it to be impaired temporarily by the construction and maintenance of a bridge across the waterway. Having obtained this right, however, as in this case the libelant has, from the United States Government, the bridge becomes a lawful structure, and therefore it is not, in law, an obstruction to navigation. It is there by right of the sovereign and under the laws of the United States must be constructed in accordance with the plans approved by the Secretary of War. It is, therefore, in every sense a lawful structure, and the libelant has a right to use it and maintain it, and the vessels navigating the river must respect this right, and therefore have no right to treat it as an obstruction or a nuisance.

Being a substitute for ferries and other watercraft, carrying the commerce which would otherwise go to these craft, it becomes an aid to navigation. It is an aid because it takes care of the vastly greater and more constant, diversified and uninterrupted traffic across the waterway, which, if carried on by watercraft, would greatly hamper and embarrass vessels bound up and down the stream, and make navigation for all more hazardous. The construction and maintenance of the bridge is very much less of an interruption or interference with the right of navigation by the vessels bound up and down the stream, than numerous ferry boats would be. These

bridges are promptly opened at the request of vessels desiring to pass up and down the stream through the same, by signals, which, if given in time, will permit the steamer to proceed without material interruption, inconvenience or loss of time. If, in place of the bridge, there were numerous ferry boats, large and small, plying across the stream carrying passengers, vehicles and cargo, it would make the passage up and down the river very much more dangerous, and it would probably be much more impeded than by a bridge which is promptly opened when the opening is requested by up and down-bound steamers.

The bridge is much more easily passed and avoided than would be the numerous ferrying craft which would carry the traffic in case there was no bridge. Being, therefore, a lawful and known structure, it is not an obstruction to navigation, and, taking the place of ferry boats, it is a substitute for them, and, being less an interference than they would be, can be justly considered an aid to navigation.

The draw span with which the Troy collided is movable; it revolves on the center table, it opens and closes; it swings across the navigable channel. It is not a fixed object; it is not a continuation of road or street; it can be swung so as to collide with a moving vessel, either by swinging against or overtaking her. The center pier is in navigable water. Before it was put there vessels could pass over the ground that it now covers. In this respect it resembles the clump of piles on which the beacon light was located when the Blackheath struck it. It was not so much because a beacon light was an aid to navigation that moved the court to declare the striking

of it a maritime tort, as the fact that it was located in navigable waters, *where a vessel could reach and strike it while engaged in navigating the waterway in which it was placed.* There is no virtue in the fact that damage was done to a thing that is used in aid, or for the purposes of navigation. If in the *Plymouth* case the flames from the steamer Falcon had set on fire a vessel hauled out on the dock for repairs, or the life-saving station, or a light house on the pier, this of itself would not have made the tort any more maritime than the damages to the warehouse. A warehouse might be considered an aid to navigation, if in it were stored goods to be shipped, or which had been carried on a vessel.

The distinction is not based upon the character of the thing injured, *but upon the character of the locality where the injury occurred.* At the time of the collision both bodies, viz: the Troy and the bridge, were moving over and in navigable water. The bridge, while opening, was struck, while the Troy was moving towards it. If the bridge had been open she would have passed on up the river without injuring it or herself. The bridge was not a fixed object when she struck it. The draw span is not fixed or fastened, it is capable of independent movement, and is no part of the pier or the structure on which it moves. It can be taken away without disturbing these.

The *Blackheath* case decided, and by the decision changed what was supposed to be the law in this, that prior to this decision claims for damages over which admiralty courts assumed jurisdiction, must in every case have occurred to floating objects. If afloat the jurisdiction was complete. If fixed to the

land, no matter how, it was not. This was the distinction, and no case can be found in which admiralty assumed jurisdiction when the object was not afloat except the case of the *Arkansas,* 17 Fed. Rep., 383. The *Plymouth* has, partially, at least, in effect been reversed by the decision of the *Blackheath* case. Since that decision a collision with a fixed object, when the latter is injured, can be brought in the Admiralty Court and a recovery for the damages can be had.

The spiles which supported the beacon light in Mobile Bay were of the same character and driven into the ground the same way, as were the spiles supporting the bridge, and in both cases were used as base, supports and foundations for superstructures. In the one case a beacon light, in the other a bridge. In both cases a vessel navigating a navigable waterway struck and damaged them. Why and how? Because, in both cases they were in navigable water. What difference in principle can the character of the structure make? Suppose the beacon light had been a floating one, anchored to the spot, like the Pintsch gas buoys in common use now are. Would there have been any doubt of the jurisdiction? Suppose this bridge had been a floating plank, timber or a pontoon bridge, would this have brought it within the jurisdiction? Is not after all the locality where the damage is done the true test? It has always been considered so, and it is so in all cases, and the *Plymouth* case, therefore, is not good authority for denying the jurisdiction in this case. In the case of the *Plymouth* the injury did not occur on, over or in navigable water. In the *Blackheath* case it did, and in this case it did.

And because one was a beacon light and the other a bridge can make no difference in principle. The vessel struck while she and the bridge were both moving on and in navigable water. This is the only true test. No other is rational or logical.

THE BRIDGE IS CONSTRUCTED, OPERATED, LIGHTED AND MAINTAINED UNDER LAWS AND REGULATIONS OF THE GOVERNMENT OF THE UNITED STATES.

The Act of Congress of August 18th, 1894, Chap. 299, Par. 5, 28, Stat. 362, Sec. 5, provides:

> "That it shall be the duty of all persons owning, operating and tending the drawbridges now built, or which may hereafter be built across the navigable rivers and other waters of the United States, to open, or cause to be opened, the draws of such bridges *under such rules and regulations as in the opinion of the Secretary of War the public interests require to govern the opening of drawbridges for the passage of vessels and other watercrafts, and such rules and regulations, when so made and published, shall have the force of law.* Every such person who shall wilfully fail or refuse to open, or cause to be opened, the draw of any such bridge for the passage of a boat or boats, or who shall unreasonably delay the opening of said draw after reasonable signal shall have been given, as provided in such regulations, shall be guilty of misdemeanor, and on conviction thereof shall be punished by a fine of not more than two thousand dollars nor less than one thousand dollars, or by imprisonment (in case of a natural person) for not exceeding one year, or by both such fine and imprisonment, in discretion of the court."

Under the Act of March 3rd, 1899, Chap. 425, Par. 9-30, Stat. 1151, superseding the Act of Con-

gress of 1890, Chap. 907, Par. 1026, Stat. 455, Sec. 9, it is provided as follows:

> "That it shall not be lawful to construct or commence the construction of any bridge, dam, dike or causeway over or in any port, roadstead, haven, harbor, canal, navigable river, or other navigable water of the United States until the consent of Congress to the building of such structures shall have been obtained and until the plans for the same shall have been submitted to and approved by the Chief of Engineers and by the Secretary of War: Provided, That such structures may be built under authority of the legislature of a state across rivers and other waterways the navigable portions of which lie wholly within the limits of a single state, provided the location and plans thereof are submitted to and approved by the Chief of Engineers and by the Secretary of War before construction is commenced; and provided further, That when plans for any bridge or other structure have been approved by the Chief of Engineers and by the Secretary of War, it shall not be lawful to deviate from such plans either before or after completion of the structure unless the modification of said plans has previously been submitted to and received the approval of the Chief of Engineers and of the Secretary of War."

Section 10 prohibits the obstruction of navigable waters, and to "in any manner alter or modify the course, location, condition or capacity of any port, roadstead, haven, harbor, canal, lake, harbor of refuge or enclosure within the limits of a breakwater or of the channel of any navigable water of the United States" unless the work has been recommended by the Secretary of War.

Section 11 provides for the establishment by the Secretary of War of harbor lines.

Section 13 makes it unlawful to deposit refuse, etc., in navigable waters.

Section 18 prohibits the obstruction of navigation by bridges, and provides for the altering and changing of the same to admit of free and unimpaired passage through them, and for the punishment for a failure to comply with this law, and in the event of litigation that an appeal or writ of error may be taken from the District Court or Circuit Court *direct to this court by the defendants.*

Section 19 provides for the removal of obstructions to navigation.

In addition to this, under the Act of March 23rd, 1906, Chap. 11, 30, 34, Stat. 84, Sec. 2, provides:

> "That any bridge built in accordance with the provision of this Act shall be a lawful structure and *shall be recognized and known as a post route,* upon which no higher charge shall be made for the transmission over the same of the mails, the troops and the munitions of war of the United States than the rate per mile paid for the transportation over any railroad, street railway or public highway leading to said bridge; and the United States shall have the right to construct, maintain and repair, without any charge therefor, telegraph and telephone lines across and upon said bridge and its approaches; and equal privileges in the use of said bridge and its approaches shall be granted to all telegraph and telephone companies."

Sec. 3:

> "That all railroad companies desiring the use of any railroad bridge built in accordance with the provisions of this Act shall be entitled to equal rights and privileges relative to the pass-

age of railway trains or cars over the same and over the approaches thereto upon payment of a reasonable compensation for such use; and in case of any disagreement between the parties in regard to the terms of such use or the sums to be paid all matters at issue shall be determined by the Secretary of War upon hearing the allegations and proofs submitted to him."

Section 4 prohibits the obstruction of navigation by bridges, and provides for the operation of the bridge, as follows:

"The persons owning or operating any such bridge shall maintain, at their own expense, such lights and other signals thereon as the Secretary of Commerce and Labor shall prescribe. If the bridge shall be constructed with a draw, then the draw shall be opened promptly by the persons owning or operating such bridge upon reasonable signal for the passage of boats and other watercraft. If tolls shall be charged for the transit of any bridge constructed under the provisions of this Act, of engines, cars, street cars, wagons, carriages, vehicles, animals, foot passengers, or other passengers, such tolls shall be reasonable and just, and the Secretary of War may, at any time, and from time to time, prescribe the reasonable rates of toll for such transit over such bridge, and the rates so prescribed shall be the legal rates demanded and received for such transit."

These statutes establish the placing of bridges as an aid to commerce in crossing a navigable river. In addition to the authority obtained from Congress or the state for the erection of the bridge, there is a regulation of all bridges over navigable waterways in the United States, even when lying entirely within a state.

First: In providing how and where they shall be

constructed so that they do not interfere with navigation of the waterway by vessels.

Secondly: Provision is made for requiring the prompt opening of them for the passage of vessels and other watercrafts.

Thirdly: The Acts of Congress provide that the Secretary of War may make and publish rules and regulations for the operation of the bridge, which shall have the force of law.

Fourthly: Under the Acts there shall be maintained on the bridge, at the expense of its owners, such lights and other signals as the Secretary of Commerce and labor shall prescribe.

There is further provision by Congress which prohibits the obstruction of the waterway by the bridge getting out of repair and condition, and the Secretary of War is authorized to compel alteration and changing of the bridge so as to provide a freer and more unimpaired passage for vessels.

In this respect bridges are subject to the laws of Congress in much the same way as are vessels. The law requires that vessels shall be inspected in hull, boiler, machinery and life saving apparatus; that they shall be equipped in a certain manner, and shall, when being navigated, carry certain lights displayed in a certain manner. They shall also observe certain rules in passing, and make certain signals in order to safely pass each other.

In a publication issued by the Lighthouse Establishment of the Department of Commerce and Labor in 1907, we find the following:

"REGULATIONS FOR LIGHTING BRIDGES OVER NAVIGABLE RIVERS.

Department of Commerce & Labor,
Light-House Board,
Washington, D. C., March 1, 1907.

The regulations published herewith were adopted by the United States Light-House Board at its session of April 2, 1883, and amended at its sessions of June 4, 1904, June 4, 1906, and July 12, 1906, in accordance with the following Act of Congress:

Act of Congress Relating to Lighting Bridges Over Navigable Rivers.

'Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, * * * That all parties owning, occupying or operating bridges over any navigable river shall maintain at their own expense, from sunset to sunrise, throughout the year, such lights on their bridges as may be required by the Light-House Board for the security of navigation; and, in addition thereto, all persons owning, occupying or operating any bridge over any navigable river shall, in any event, maintain all lights on their bridge that may be necessary for the security of navigation.

Approved August 7, 1882.

By order of the Light-House Board:

GEORGE C. REITER,
Rear-Admiral, U. S. Navy, Chairman.'"

Following this there is a description of the different types of the bridges, and the provisions for the kind of lights that are to be maintained on these bridges, and on page 18 of this circular we find the following in relation to the operation of draw bridges:

"STOPS FOR DRAW BRIDGES.

"It having come to the knowledge of the Board that in some cases, owing to the wind or

> the momentum of their weight, draw bridges have swung through more than their proper angle, thus obstructing the opening and endangering the safety of navigation, the attention of the owners or operators of draw bridges is hereby called to the importance of providing stops to prevent draws from rotating beyond the proper point."

On page 19 is a description of the kind of lights that were adopted by the Light-House Board at its session of June 4th, 1906.

The last previous circular to the one above was issued on June 21st, 1904, but there was issued by the Light-House Board July 12th, 1906, a circular which is found on page 18 of Light-House Board Regulations, issued in 1907, which provides that the use of oil lamps shall be discontinued on bridges over navigable streams where electric lights are used.

These regulations, by virtue of the statutes, have the force of law and must therefore be strictly observed by the persons operating and maintaining bridges over navigable waters. The law applies to all bridges over navigable streams, including those authorized by the legislature of states as well as of those in which the construction is authorized by Congress, the latter class being bridges over waterways which are a boundary between states.

The bridge required by law to be opened and moved out of the way of a vessel which gives a proper signal for such opening. It must be so constructed as not to impede or interfere with the navigation of the waterway by vessels. The bridge is, therefore, in its construction, maintenance and

operation, as much subject to the laws of Congress as is the vessel.

It is an aid to commerce, as under the Act of March 23rd, 1906, it shall be known as a post route and the rates or charges to be made for the transmission of mails, troops and munitions of war of the United States is regulated by this statute, and the right is granted to the government to maintain telegraph and telephone lines across the bridge. Under these acts, as an aid to commerce, other railroad companies desiring to use any railroad bridge built under the authority of Congress, may do so, and the compensation for the use of such bridge is to be determined by the Secretary of War. We have then a structure authorized by Congress, constructed according to specifications approved by the Secretary of War, and regulated in its operations for the purpose of land traffic, by a department of the government, and also in its operation in relation to navigation.

Does it not, therefore, closely resemble in principle the aid to navigation with which the Blackheath collided in Mobile bay? The only difference is that the bridge and the lights on it are not maintained at the expense of the government. The bridge, is, however, just as much under the control of it as was the light on the clump of spiles when the Blackheath struck it.

A person injuring a light used by the government, as the one displayed from the spiles in Mobile Bay, can be punished by fine or imprisonment.

The owner of a bridge who refuses to open the same for the passage of vessels is also, under the Acts of Congress, guilty of a misdemeanor, for

which he can be punished by fine or imprisonment. And the same is also true if the owner maintains an improper bridge or one which is objectionable to the War Department on account of its interfering or impairing the right of navigation.

Both are erected and maintained under the supervision of the government, and both the bridge and light are an aid to commerce. And we contend that the bridge is a lawful structure and an aid to navigation, within the rule laid down in the case of the *Blackheath*.

A bridge which readily opens for the passage of vessels is at no time an obstruction, even though it is an obstacle to navigation. It is, however, no more an obstacle to navigation than another vessel at anchor in the same locality would be. It is much more readily avoided by a passing vessel than is another moving vessel, even though bound in the same or in the opposite direction. In the matter of crossing a navigable channel, it is less an obstacle than a crossing vessel would be, so that by furthering and expediting the passage of vessels up and down the stream it is to that extent aiding vessels in navigating it, and therefore is an aid to navigation.

The Rule of Stare Decisis.

Far be it from us to say that the rule of *stare decisis* is not a good rule, or one that should be lightly held and regarded. Still, we feel if it stands for mere precedent in procedure it ought not to be adhered to with too much firmness. In every case when the question is one of procedure and practice, and there is no right of property or rule of human conduct involved, the rule of *stare decisis* should

give way to the better rule of reason and right. In this case there is no right of property or human conduct involved. The question is one involving procedure, and the rounding out, finishing and completing of the admiralty jurisdiction of this country, making it a more perfect system, and if precedent be sought for it, following in this respect the extension by Act of Parliament of the jurisdiction of the modern English Admiralty Courts. These are more fortunate than those of our country in that the jurisdiction could be, and was amplified and extended by Acts of Parliament. Under our system it would require a constitutional amendment (a quite impossible method) of providing what is, after all, a mere matter of detail relating to admiralty jurisdiction. It being, therefore, a matter in which the legislature is unable to assist, and which, cannot be done otherwise than by this court, we are compelled to seek here for what in almost any other case we could ask for through the legislature. The legislature being powerless under the decisions of this court to enlarge the admiralty jurisdiction beyond its present scope, this court, when no hardship results from so doing, ought to liberally consider the claims of suitors who seek the jurisdiction and give them *entree* to it in every case in which reason, right and expediency demand it, and when no violence is done to the fundamental law under which the Courts of Admiralty were and are organized and maintained.

Let us examine a practical operation of an amplification of the admiralty jurisdiction, so that it would embrace cases of damage inflicted by passing vessels to wharves and bridges. If under a narrow

construction in such a case, a vessel is injured, her owner can resort to an Admiralty Court to recover his damages. The owner of the bridge cannot. If the jurisdiction is extended to embrace damages to the bridge he can. He loses nothing by being allowed to go into admiralty. The ship owner loses nothing by having him proceed there. If the bridge owner is permitted to file his libel or cross-libel in admiralty, the vessel owner finds himself in the very court into which he has a right to go, or into which he has already gone. The result would amount to this, that the bridge owner would have one additional tribunal in which he could sue to recover his damages, or could, when sued, recover by cross-libel his damages, in the same suit in which the vessel owner recovers his damages.

The rule of damages in the admiralty and common law courts is different. The libelant or plaintiff, though in fault, can, in the Admiralty Court, recover one half his damages when the defendant is also at fault, and the latter can, by cross libel, recover or offset his claim for damages as well. Under the narrow construction the hardship and injustice lies in this:

An owner of a vessel damaged by collision with a bridge, suing in admiralty, is found to have been equally at fault with the owner of the bridge. In that case the vessel owner recovers one-half his damages, amounting to, say, $1,000. The bridge owner cannot, upon a cross libel, recover any part of the damages sustained by the bridge, amounting to $100,000, because the Admiralty Court has no jurisdiction to award the damages. The bridge owner must, therefore, pay the decree of the vessel

owner, and pursue his remedy for damages to the bridge, in a common law court. *Here he cannot recover because he has been guilty of negligence,* and although the vessel owner is equally at fault for the collision, and therefore could not have recovered had he brought his action in the common law court, still he recovers, notwithstanding this, one-half of his damages through the decree of the Admiralty Court, while the bridge owner, denied a hearing in admiralty, and defeated at common law, not alone bears all his own damages, but also one-half of those sustained by the vessel owner, which the Admiralty Court, has compelled him to pay by its decree.

Suppose the damages to the vessel amount to $150,000 in the case above cited, instead of $1,000, if both parties were jointly at fault, the vessel owner would recover on half of his damages, or $75,000. The bridge owner would be compelled to pay the decree, and at the same time be unable to obtain a decree for one-half his damages. If, after that, he went to a common law court, he would be defeated there because of his contributary negligence, and the result would be that he would pay the vessel owner $75,000, and bear all his own damages.

This nullifies completely the rule of damages in admiralty when the collision is one between a fixed object and the vessel, in all cases where there is mutual fault. We know of no remedy which the bridge owner could pursue, and under which he could recover the one-half of the damages to the bridge that would have been awarded him in admiralty had he been allowed to prove the damages.

We find, then, that if the court narrows the jurisdiction and does not entertain the claim for dam-

ages to the bridge or wharf, the bridge and wharf owner is deprived of a right of property which, in justice and equity, he is entitled to when he is forced into a Court of Admiralty by the vessel owner and compelled to litigate there the question of liability for the collision between the steamer and the bridge or wharf.

This property right arises out of the rule of damages which prevails in admiralty. It is a fixed rule and right under the law. Long established, well known and more nearly just than the common law rule, and he is placed in this position, not by any act of his, but because the vessel owner sues him in admiralty and compels him to go there. If the vessel owner had pursued the bridge owner at common law, and both parties were at fault, he could not recover at all, and each party would practically have to bear his own damages. Under a narrow construction of the jurisdiction the bridge owner must not alone bear all his damages, but one-half of those of the vessel owner whenever both are found to have been at fault. This is unjust and unreasonable.

Who can complain if the bridge owner be permitted to come into admiralty to litigate his cause of action? The only other person interested is the vessel owner. If objection is made, it must come from him. The general public is not interested; but how can the vessel owner be heard to complain, when the court is asked to give to the bridge owner the same rights that the vessel owner claims and obtains for himself. Why should not both parties have equal rights in a court into which one of the parties forces the other? Yet, up to now, the admiralty hearing is denied to the libelant for his damages

sustained by the bridge, while the vessel owners' damages can be decreed to him, even when both are jointly at fault for causing the damage. In this way injustice is done to the bridge owner, because the greater privilege that is accorded the vessel owner, who has access to the Admiralty Court, and this is denied the bridge owner. This works injustice. Any system of jurisprudence that does that, is imperfect and wrong, and ought to be changed, and when this can be done, so that there are equal rights to both parties without injury, hardship or even inconvenience to anyone concerned, it ought to be done and we believe it to be the duty of the court to do it. The fact that the Admiralty Court already has jurisdiction when it is sought by the vessel owner, and can, therefore, hear and determine the controversy, relieves the court of all embarrassment which would arise were the cause of action one which was strange to the admiralty.

We believe the decision of the court in the case of the *Blackheath* warrants the prevailing opinion of the Admiralty Bar of the country that the *Plymouth* case does not mean that all claims for damages sustained by objects on the land or affixed to it, shall be excluded from the realm of the admiralty, even when not aids to navigation. The only sound rule is that all damages done by a ship should be within the admiralty jurisdiction. It is the broader, more reasonable and more practical and sensible rule. It is much more just and equitable, as well as reasonable, especially when the collision itself is already within the jurisdiction and this is sought by the damaged vessel owner.

To confine the jurisdiction so as to exclude the

damages of the bridge and wharf owner can serve no useful purpose. It must necessarily be unsatisfactory to one side of the controversy without (as is usual in decisions) even benefiting the other side. The vessel owner has no special advantage in excluding the bridge owners' claim for damages from the jurisdiction. He may compel him to defend a second suit instituted by the bridge owner, after the Admiralty Court has heard and decided the controversy. Such a condition is an anomoly in the law. We can find no precedent for it in the common law or in chancery courts. Courts of Admiralty are equity courts rather than courts of law. The practice and procedure there resembles more nearly that of the court of chancery. The pleadings are as plain and as simple as those found in equity, and if equity principles are to govern how can one party be denied the same rights in the court that are given to the other, when they arise out of the determination of the controversy which the court is called upon to hear and decide? No such practice prevails in equity. As this court say in the case of *North Chicago Roll Mill Co.* v. *St. L. Ore & S. Co.*, 152 U. S., 596:

> "Cross demands and counterclaims, whether arising out of the same or wholly disconnected transactions, and whether liquidated or unliquidated, may be enforced, by way of set-off, whenever the circumstances are such as to warrant the interference of equity to prevent wrong and injustice.
>
> "Again, it is well established that equity will entertain jurisdiction, and afford relief against the collection of a judgment, where, in justice and good conscience, it ought not to be enforced, as where there is a meritorious, equit-

able defense thereto, which could not have been set up at law, or which the party was without fault or negligence, prevented from interposing. Illustrations of these general principles are found in the cases of *Leeds* v. *Insurance Co.*, 6 Wheat., 565; *Scammon* v. *Kimball*, 92 U. S., 362; *Crimm* v. *Handley*, 94 U. S., 652; *Embry* v. *Palmer*, 107 U. S., 3; 2 Sup. Ct., 25; *Knox Co.* v. *Harshman*, 133 U. S., 154; 10 Sup. Ct., 257; *Marshall* v. *Holmes*, 141 U. S., 589; 12 Sup. Ct., 62.

"The adjustment of demands by counterclaim or set-off, rather than by independent suit, is favored and encouraged by the law, to avoid circuity of action and injustice." *Railroad Co.* v. *Smith*, 21 Wall., 255.

As to the rule of *stare decisis*, if it should be sought to be invoked in this case against the jurisdiction, we desire to quote the language of Chancellor Kent in 1 Kent Com., 477:

> "Even a series of decisions are not always conclusive evidence of what is law; and the revision of a decision very often resolves itself into a mere question of expediency, depending upon the consideration of the importance of certainty in the rule, and the extent of property to be affected by a change of it. Again, he says: 'It is probable that the records of many of the courts in this country are replete with hasty and crude decisions; and such cases ought to be examined without fear, and revised without reluctance, rather than to have the character of our law impaired, and the beauty and harmony of the system destroyed by the perpetuity of error.'"

It is also justly said by Senator Platt in *Yates* v. *Lansing*, 9 Johnson, 415; 6 Am. Dec., 290, that "the decisions of courts are not the law; they are only evidence of the law."

In the case of *Henry* v. *Bank of Salina*, 5 Hill, 535, it is said:

> "I hope we shall consider what a decision really is and treat it accordingly; not as the law, nor as giving the law, but simply as evidence of the law, and not conclusive evidence, but only *prima facie* evidence of what the law is."

In *Bright* v. *Sutton*, 12 Eng. L. & Eq., 15, the Lord Chancellor of England said to the House of Lords:

> "You are not bound by any rule of law which you could lay down if, upon a subsequent occasion, you should find reason to differ from that rule; that is, like every court of justice (and to regard this as a court of justice), it is inherent in the nature of every court of justice that it should have liberty to correct any error into which it may have fallen."

In *Hart* v. *Burnett*, 15 Cal., 530, page 607, the court say:

> "Consistency purchased by adherence to decisions at the sacrifice of sound principle is dearly bought. But we deem it unnecessary to further pursue this discussion, for we know quite well that there is not a court in England or America that has not corrected erroneous departures from the principles of justice by overthrowing previous decisions. * * * Much as we respect the principle of *stare decisis*, we cannot yield to it when to yield is to overthrow principle and do injustice. Reluctant as we are to depart from former decisions, we cannot yield to them if, in yielding, we perpetuate error and sacrifice principle. We have thought it wisest to overrule outright rather than to evade, as is often done, by an attempt to distinguish where distinction there is none. We

have preferred the censure that sometimes falls upon us rather than undertake to distinguish, and thus make 'confusion worse confounded,' where there is no room to limit or distinguish."

The Supreme Court of Indiana, in the case of *Board of Com.* v. *Allman*, 142 Ind., 572, said:

> "While the rule of *stare decisis* is a salutary one, yet it is not to be applied in all cases. If a decision or series of decisions are clearly incorrect, either through a mistaken conception of the law, or through a misapplication of the law to the facts, *and no injurious results would follow from their overthrow, and especially if they were injurious or unjust in their operation, it is the duty of the court to overrule such cases.* 6 Alb. L. J., 329; *Church* v. *Brown*, 21 N. Y., 335. But if a principle of law, doubtful in its character or uncertain in the subject matter of its application, has been settled by a series of decisions, until it has become an established rule of property or the basis of contracts, it should not be overthrown except from the most urgent considerations of public policy. *Hines* v. *Driver*, 89 Ind., 339; *Grubbs* v. *State*, 24 Ind., 295; *Harrow* v. *Myers*, 29 Ind., 469; *Rockhill* v. *Nelson*, 24 Ind., 422, 424. To that extent only are courts ordinarily restrained from correcting mistakes which they may have made. It must not be understood, however, that a previous line of decisions affecting even property rights can in no case be overthrown. If the evil resulting from the principle so established is greater than the mischief to the community could possibly be from a disregard of former adjudications, they should be overruled, and a new rule declared. *Boon* v. *Bowers*, 30 Miss., 246; 64 Am. Dec., 159."

The Genesee Chief, 12 How., 443:

In this case Chief Justice Taney delivered the opinion of the court, and the question involved was

as to whether the admiralty jurisdiction should be extended to the Great Lakes. The court, after reviewing the importance of the lakes, said:

> "Hostile fleets have encountered on them and prizes have been made; and every reason which existed for the grant of admiralty jurisdiction to the general government on the Atlantic, applies with equal force to the lakes. There is equal necessity for the instance and the prize power of the Admiralty Court to administer international law, and if the one cannot be abolished neither can the other."

The court disregarded the dogma restricting the admiralty jurisdiction to tide waters borrowed from the jurisdiction of England, where all public waters, with but few small and unimportant exceptions, were of this description, as inapplicable to this country, differing in this respect, so widely in its physical features that it ought to be disregarded as unreasonable and fallacious. The court was not insensible to the previous decision in the case of *The Thomas J.*, 10 Wheat., 428, which limited the admiralty jurisdiction to tide waters, and as to this case observed that it

> "did not decide any question of property, or lay down any rule by which the right of property should be determined. If it had, we should have felt ourselves bound to follow it, notwithstanding the opinion we have expressed. * * *
>
> "In such a case *stare decisis* is the safe and established rule of judicial policy, and should always be adhered to. * * * But the decision referred to has no relation to the rights of property. It was a question of jurisdiction only, and the judgment we give can disturb no right of property nor interfere with any contracts heretofore made. And as we are con-

> vinced that the former decision was founded in error, and that the error, if not corrected, must produce serious public inconvenience and loss, it becomes our duty not to perpetuate it."

and this brings us to the history of the original locality test in admiralty cases in this country.

The test of admiralty jurisdiction as to locality in cases of both contracts and torts, originally was the tide. The Admiralty Court had no jurisdiction of contracts relating to vessels that plied in waters where the tide did not ebb and flow. No tort or injury that arose on waters above the ebb and flow of the tide were cognizable in admiralty no matter what the character of the ship was, where she was from, or what she was engaged in doing.

The Thos. Jefferson, 10th Wheat., 424, decided in 1825:

It is here held that wages of seamen earned on a steamer plying between ports in the States of Kentucky and Missouri were not within the jurisdiction of the Admiralty Court.

Peyroux v. *Howard*, 7th Pet., 324, decided in 1833:

It was held that a lien for repairs could be enforced because the vessel plied on waters in which there was a tide.

Orleans v. *Phoebus*, 11 Pet., 175, decided in 1837:

It was held that a libel for partition filed by one of the owners of a vessel was not within the jurisdiction of the Admiralty Court because the steamer was solely engaged in river navigation above the tide.

The tide was the test up to the passage of the Act

of 1845, which extended the jurisdiction in admiralty to the waters of the Great Lakes.

The important case after the passage of that act was the case of *The Genesee Chief*, 12 How., 443, decided in 1851, and it was there held that the admiralty had jurisdiction of a collision which occurred on Lake Ontario, and the Act of 1845 was held to be an enabling act and a grant of jurisdiction over waters without tide.

This was the beginning. Then followed *Fretz* v. *Bull*, 12 How., 466, in which it was held that a collision in the Mississippi river above the tide was within the jurisdiction.

Then *The Magnolia*, 20 How., 296, in which a collision in the Alabama river was brought within the jurisdiction.

Then *Nelson* v. *Leland*, 22 How., 296. A collision on the Yazoo river was brought in.

The Eagle, 8 Wall., 15. A collision in Canadian waters was held to be within the jurisdiction. In this case the right was based upon the Judiciary Act of 1789, and not on the Act of 1845, and this Act was held not to have been an enabling act and was therefore of no validity.

We see, therefore, that reason and expediency, without legislative declaration, triumphed over the tide rule which once was as authoritative, if not more so, than was any rule which could be formulated under the case of *The Plymouth*.

The court, however, held that under the original grant of the Act of 1789 the admiralty jurisdiction embraced both torts and contracts which arose on waters above the ebb and flow of the tide. We now ask that the case of *The Plymouth* be not permitted

to stand in the way of the extension of the admiralty jurisdiction under the original grant to cases of damage done by a ship, as provided by the Merchants' Shipping Act of England, and in making such a decision no more violence will be done to the provisions of the Act by extending the jurisdiction, than was done to that Act by extending the jurisdiction to waters where the tide did not ebb and flow. In fact, the tidal rule seemed to be one which was perfectly intrenched in England and in this country, and for more than fifty years was the undisputed rule and test in determining the question of jurisdiction in admiralty.

The *Plymouth* case was decided in 1866, and it has been considered (but with some doubt) as furnishing a rule which will exclude jurisdiction when the damage is done to a structure on land or fixed to the land, and not maintained as an aid to navigation. It was made without the support of a single decision in this country, either in the District or Circuit Courts of the United States. We can find no decisions in either of these courts upon the point.

In 1866, when this case was decided, there were not as many bridges as there are now. There were not as many steamers as there are now. Much of the loading and unloading in many of the ports was done while the vessels were at anchor, and was carried on by boats or lighters. The importance of wharfs and docks in navigable waterways and their use has greatly increased since the decision of that case, and now nearly all cargoes are taken on or discharged while the ship is alongside of a wharf, and in this way the expense of handling cargoes is greatly reduced and expedited. The change in the

character of the implements of commerce from the lighter to the wharf, the increased size and number of steam vessels, and the possible danger to structures on land by reason of the vessels coming to and going from wharves, creates an expediency and necessity, under present day conditions, for a different rule than prevailed forty years ago. We contend, therefore, that under the original grant of the admiralty jurisdiction we are warranted in asking the court to so construe this grant and the decisions under it as to embrace all cases of,

First: Damage done by any ship while navigating the navigable waterways of the United States.

Second: That this shall include all damage done by a ship to lighthouses, wharves, piers, breakwaters, docks, bridges and every necessary part of them.

Third: That locality shall be the test in all cases of injury done by a ship, without regard to whether the injury happens on land or to objects fixed to the land.

Respectfully submitted.

CHARLES E. KREMER,
JOHN A. MURPHY,
Proctors for Appellant.

December, 1907.